

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/CH2004/000505

International filing date (day/month/year)
13.08.2004

Priority date (day/month/year)
18.08.2003

International Patent Classification (IPC) or both national classification and IPC
C07F5/06

Applicant
GIVAUDAN SA

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/CH2004/000505

10/568831
IAP5 Rec'd PCT/PTO 17 FEB 2006

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

1. ☒ The following document has not been furnished:

- ☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and Industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 3

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 3
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
- ☐ See separate sheet for further details

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
Industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	1,2,4-7
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1,2,4-7
Industrial applicability (IA)	Yes: Claims	1,2,4-7
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

- 1) The process according to present claims 1, 2 and 4 differs from the prior art, represented by

D1: US-A-2 712 546 (HUBERT HUNTER WILLIAM ET AL) 5 July 1955 (1955-07-05)

D2: US-A-2 848 472 (COTTLE DELMER L) 19 August 1958 (1958-08-19)

in the basis material $R_3Al_2X_3$ which is not mentioned in the prior art.

Accordingly the subject-matter of present claims 1, 2 and 4 is novel pursuant to Article 33(2) PCT.

- 2) As mentioned at present page 1, lines 16 and 17, the present problem was to find a cheap efficient process. However, looking at the prior art (cf. examples 1), it becomes evident that the prior art processes (which are well known since decades) obviously are already very cheap and efficient. The fact the applicant uses $R_3Al_2X_3$ as complicated basic material appears to make the process less cheap and less efficient.

Accordingly the problem as stated by the applicant has not been solved, therefore no inventive step according to Article 33(3) PCT can be acknowledged.

- 3) As regards present claims 5 and 6, the applicant argues (cf. present page 4, lines 14-16 that the present process increases the proportion of the compounds of formula I which is not possible by US-A-5 707 961 (BAJGROWICZ JERZY A ET AL) 13 January 1998 (1998-01-13) [D3]. However, looking at D3, column 3, lines 8-14 and column 6, lines 37-54 it appears to be obvious that the cyclisation which the only subject of present claims 5 and 6 can be easily done by the addition of phosphoric acid, no particular problem can be recognized.

Accordingly, without a clear proof a superior effect over the prior art, which is not present at the moment, novelty can be formally acknowledged (Article 33(2) PCT), but the subject-matter of present claims 5 and 6 does not involve an inventive step

with regard to Article 33(3) PCT.

Re Item VII

Certain defects in the international application

- 1) D1-D2 which represent a relevant prior art should be referred to in the description in accordance to Rule 5(1)(a)(ii) PCT.